

## Nuclear Regulatory Commission

## § 2.1103

is filed, the decision sought, if appropriate, must be rendered.

(c) The Presiding Officer shall render the decision sought if the filings in the proceeding show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. However, in any proceeding involving a construction authorization for a geologic repository operations area, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the authorization must be issued.

[56 FR 7798, Feb. 26, 1991]

### § 2.1026 Schedule.

(a) Subject to paragraphs (b) and (c) of this section, the Presiding Officer shall adhere to the schedule set forth in appendix D of this part.

(b)(1) Pursuant to § 2.711, the Presiding Officer may approve extensions of no more than 15 days beyond any required time set forth in this subpart for a filing by a party to the proceeding. Except in the case of exceptional and unforeseen circumstances, requests for extensions of more than 15 days must be filed no later than 5 days in advance of the required time set forth in this subpart for a filing by a party to the proceeding.

(2) Extensions beyond 15 days must be referred to the Commission. If the Commission does not disapprove the extension within 10 days of receiving the request, the extension will be effective. If the Commission disapproves the extension, the date which was the subject of the extension request will be set for 5 days after the Commission's disapproval action.

(c)(1) The Presiding Officer may delay the issuance of an order up to thirty days beyond the time set forth for the issuance in appendix D.

(2) If the Presiding Officer anticipates that the issuance of an order will not occur until after the thirty day extension specified in paragraph (c)(1) of this section, the Presiding Officer shall notify the Commission at least ten days in advance of the scheduled date

for the milestone and provide a justification for the delay.

[56 FR 7798, Feb. 26, 1991]

### § 2.1027 Sua Sponte.

In any initial decision in a proceeding on an application to receive and possess waste at a geologic repository operations area, the Presiding Officer, other than the Commission, shall make findings of fact and conclusions of law on, and otherwise give consideration to, only those matters put into controversy by the parties and determined to be litigable issues in the proceeding.

[56 FR 7798, Feb. 26, 1991]

## Subpart K—Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors

SOURCE: 50 FR 41670, Oct. 15, 1985, unless otherwise noted.

### § 2.1101 Purpose.

The regulations in this subpart establish hybrid hearing procedures, as authorized by section 134 of the Nuclear Waste Policy Act of 1982 (96 Stat. 2230), to be used at the request of any party in certain contested proceedings on applications for a license or license amendment to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power plant. These procedures are intended to encourage and expedite onsite expansion of spent nuclear fuel storage capacity.

### § 2.1103 Scope.

The procedures in this subpart apply to contested proceedings on applications filed after January 7, 1983, for a license or license amendment under part 50 of this chapter, to expand the spent fuel storage capacity at the site of a civilian nuclear power plant, through the use of high density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage

## § 2.1105

capacity, or by other means. This subpart also applies to proceedings on applications for a license under part 72 of this chapter to store spent nuclear fuel in an independent spent fuel storage installation located at the site of a civilian nuclear power reactor. This subpart shall not apply to the first application for a license or license amendment to expand the spent fuel storage capacity at a particular site through the use of a new technology not previously approved by the Commission for use at any other nuclear power plant. This subpart shall not apply to proceedings on applications for transfer of a license issued under part 72 of this chapter. Subpart M of this part applies to license transfer proceedings.

[50 FR 41670, Oct. 15, 1985, as amended at 63 FR 66730, Dec. 3, 1998]

### § 2.1105 Definitions.

As used in this part:

(a) *Civilian nuclear power reactor* means a civilian nuclear power plant required to be licensed as a utilization facility under section 103 or 104(b) of the Atomic Energy Act of 1954.

(b) *Spent nuclear fuel* means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

### § 2.1107 Notice of proposed action.

In connection with each application filed after January 7, 1983, for a license or an amendment to a license to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power plant, for which the Commission has not found that a hearing is required in the public interest, for which an adjudicatory hearing has not yet been convened, and for which a notice of proposed action has not yet been published as of the effective date of this subpart, the Commission will, prior to acting thereon, cause to be published in the FEDERAL REGISTER a notice of proposed action in accordance with § 2.105. The notice of proposed action will identify the availability of the hybrid hearing procedures in this subpart, specify that any party may invoke these procedures by filing a timely request for oral argument under § 2.1109, and provide that if a request

## 10 CFR Ch. I (1–1–04 Edition)

for oral argument is granted, any hearing held on the application shall be conducted in accordance with the procedures in this subpart.

### § 2.1109 Requests for oral argument.

(a)(1) Within ten (10) days after an order granting a request for hearing or petition for leave to intervene, any party may invoke the hybrid hearing procedures in this subpart by requesting an oral argument. Requests for oral argument shall be in writing and shall be filed with the presiding officer. The presiding officer shall grant a timely request for oral argument.

(2) The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for failure to file on time and after providing the other parties an opportunity to respond to the untimely request.

(b) The presiding officer shall issue a written order ruling on any requests for oral argument. If the presiding officer grants a request for oral argument, the order shall include a schedule for discovery and subsequent oral argument with respect to the admitted contentions.

(c) If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, the presiding officer shall conduct the proceeding in accordance with subpart G of 10 CFR part 2.

### § 2.1111 Discovery.

Discovery shall begin and end at such times as the presiding officer shall order. It is expected that all discovery shall be completed within 90 days. The presiding officer may extend the time for discovery upon good cause shown based on exceptional circumstances and after providing the other parties an opportunity to respond to the request.

### § 2.1113 Oral argument.

(a) Fifteen (15) days prior to the date set for oral argument, each party, including the NRC staff, shall submit to the presiding officer a detailed written summary of all the facts, data, and arguments which are known to the party at such time and on which the party proposes to rely at the oral argument